

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RALPH L. TOMPKINS and NATIONAL AERONAUTICS SPACE
ADMINISTRATION, GODDARD SPACE FLIGHT CENTER, Greenbelt, MD

*Docket No. 03-1268; Submitted on the Record;
Issued August 19, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has met his burden of proof in establishing that he sustained a recurrence of total disability due to his February 1, 2000 employment injury.

On February 7, 2002 appellant, a 49-year-old engineering technician, filed claim for traumatic injury on February 1, 2000 when he slipped on ice, while in the performance of duty. On June 14, 2000 the Office of Workers' Compensation Programs accepted appellant's claim for lumbago and authorized epidural blocks. The Office authorized intradiscal electrothermal therapy on October 18, 2000. Appellant underwent this procedure on December 4, 2000 at L4-5.

On December 4, 2001 the Office received medical information indicating that appellant experienced a sudden onset of pain in the back and right leg on October 23, 2001. The Office requested additional factual and medical information by letter dated December 5, 2001. Appellant filed a notice of recurrence of disability on December 20, 2001 alleging that on October 23, 2001 he experienced a recurrence of total disability. He stopped work on October 24, 2001. Appellant returned to his light-duty job on October 29, 2001. His supervisor noted that he had not returned to full duty following his February 1, 2000 employment injury, instead performing only desk-type activities. The Office denied appellant's claim by decision dated January 7, 2002, finding that he failed to submit sufficient factual and medical evidence.

Appellant requested reconsideration on January 11, 2002 and submitted additional new evidence. By decision dated April 23, 2002, the Office denied modification of its prior decision,

finding that appellant failed to submit sufficient rationalized medical opinion evidence to establish a causal relationship between his current condition and his accepted employment injury.¹

The Board finds that appellant has failed to meet his burden of proof in establishing that he sustained a recurrence of total disability due to his February 1, 2000 employment injury.

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establish that he can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.² Furthermore, appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his recurrence of disability commencing October 23, 2001 and his February 1, 2000 employment injury.³ This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.⁴

Appellant underwent a functional capacity evaluation on August 22, 2001. The evaluation demonstrated that he was capable of light physical demand work, rendering him disabled for his date-of-injury position. The report concluded that appellant should remain in his light-duty position of building manager, that it was not feasible for him to return to his date-of-injury position and that his case should be closed.

Appellant stated that he was attending classes on the evening of October 30, 2001 and experienced severe pain in the injured area of his back, while walking. He sought medical treatment and stated that the physical symptoms and conditions were the same as those which resulted from his accepted employment injury.

In support of his claim, appellant submitted several reports from Dr. Brian S. Kahan, an osteopath. On October 29, 2001 Dr. Kahan stated that appellant was attending class on October 23, 2001, when he developed a sudden onset of pain in his back and right leg. Dr. Kahan recommended a magnetic resonance imaging (MRI) scan and stated, "I am not sure if this is exacerbation of his old injury or not. [Appellant's] symptoms in the past were down the left leg and this is new down the right."

¹ On appeal to the Board, appellant submitted additional new evidence. As the Office did not consider this evidence in reaching a final decision, the Board may not review the evidence for the first time on appeal. 20 C.F.R. § 501.2(c).

² *Terry R. Hedman*, 38 ECAB 222 (1986).

³ *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

⁴ *See Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

Appellant's November 7, 2001 MRI demonstrated a small disc herniation at L4-5 posterior. Dr. Kahan reviewed this report on November 15, 2001 and noted that appellant reported pain in the back and left leg. He stated: "Review of [the] MRI compared to February 2000 reveals another annular tear at L4-5.... Since [appellant's] symptoms seem to be identical to his prior episodes, I think the annular tear has reoccurred." In a narrative report dated December 14, 2001, Dr. Kahan noted appellant's history of injury on October 23, 2001 of sudden excruciating lower back pain radiating into his right leg. He stated:

"Due to [appellant's] history of similar symptoms, I recommended an MRI at that time to determine whether or not his exacerbation was related to his old injury. In the past, he had complained of pain down the left leg, not the right. A comparison MRI would determine whether or not his symptoms were coming from the same level or not.

"On November 15, 2001 [appellant] returned to my office stating [that] the pain was unchanged, but was also affecting the left leg as well as the right. A review of this new MRI dated November 7, 2001 revealed another annular tear at L4-5 and since his symptoms seem to be identical to his prior episodes, I believe that this is an exacerbation of his original injury."

Dr. Kahan opined that appellant's current condition was related to his accepted employment injury and supported his opinion by stating that his symptoms seemed to be identical. This is insufficient to establish that appellant has sustained a recurrence of disability. Dr. Kahan did not offer any medical reasoning explaining how or why appellant would develop a new annular tear. He did not attempt to describe the processes by which appellant's initial condition could abate to the degree that he could perform work of a light physical demand and then suddenly result in a severe exacerbation without an intervening cause. As Dr. Kahan did not clearly explain how appellant's accepted employment injury of lumbago could have spontaneously resulted in his current condition, a new annular tear at L4-5, his reports are not sufficiently well rationalized to meet appellant's burden of proof in establishing a recurrence of disability.

Appellant did not provide sufficient rationalized medical opinion evidence to establish that his current condition is causally related to his accepted employment injury and the Office, therefore, properly denied his claim.

The decision of the Office of Workers' Compensation Programs dated April 23, 2002 is hereby affirmed.

Dated, Washington, DC
August 19, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member